CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 535.

THE UNITED STATES

vs.

JU TOY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED FEBRUARY 24, 1905.

(19635.)

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1 In the United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
JU TOY, APPELLEE. } No. 1164.

Certificate of the United States circuit court of appeals for the ninth circuit to the Supreme Court of the United States, under section 6 of the act of March 3, 1891, entitled "An act to establish circuit courts of appeals, and to define and regulate, in certain cases, the jurisdiction of the courts of the United States, and for other purposes."

Ju Toy, the appellee above named, is a Chinese person, who came from the Empire of China to the port of San Francisco, said port being a port of entry for Chinese immigrants, and on October 24, 1904, made application in person to H. H. North, the duly appointed, qualified, and acting officer of the United States in charge of the enforcement of the Chinese exclusion laws at the port of San Francisco, appointed as such officer by the Secretary of Commerce and Labor, and acting under the directions of the Commissioner-General of Immigration, to be admitted to the United States, claiming the right to be so admitted on the ground that he was born in the United States and was a citizen thereof. Thereupon
2 he was given opportunity by said officer to make such voluntary statement in support of his right to be admitted as he might desire, and also to produce such witnesses and offer such proof in support of his claim for admission as he might wish. All the evidence offered by the said applicant was received by said officer and by his examining officers designated for that purpose, and, after full consideration of all the evidence so offered, it was, on November 5, 1904, adjudged by the said officer that the said Ju Toy was a Chinese alien, and was not born in the United States, and was not entitled under any law to enter or remain therein, *and was not entitled under any law to enter or remain therein*, and he was accordingly ordered to be deported to China, whence he came. On November 7, 1904, the said Ju Toy took an appeal from the decision of said officer to the Secretary of Commerce and Labor, whereupon said officer forwarded to the Commissioner-General of Immigration all the evidence, affidavits, statements, and briefs submitted on the hearing of the application, accompanied by his views thereon in writing, for the submission of said appeal to the Secretary of Commerce and Labor. Upon consideration thereof the Secretary of Commerce and Labor, on December 13, 1904, approved the action of said North as such officer, and dismissed the said appeal. On December 29, 1904, a petition for writ of habeas corpus was presented in behalf of said Ju Toy to the Honorable J. J. De Haven, judge of the district court of the United States for the northern district of California, which is as follows:

"In the district court of the United States, northern district of California.

"In re Ju Toy, #36, S. S. "Doric," on habeas corpus. Petitioner's picture.

"Petition for writ of habeas corpus and order allowing same.

"To the Honorable J. J. De Haven, judge of the district court of the United States, northern district of California:

"The petition of the undersigned respectfully shows:

"That Ju Toy is unlawfully imprisoned, detained, confined, and constrained of his liberty by the general manager of the O. and O. Steamship Company, in the city and county of San Francisco, State of California, northern district of California.

"That the imprisonment, detention, confinement, and constraint aforesaid are illegal, and the illegality thereof consists in this, to wit: That it is claimed by the said general manager of the above-mentioned steamship company that the said passenger is a subject of the Emperor of China, and must not and can not be allowed to land under the
3 provisions of the act of Congress of May 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the acts amendatory thereof and supplemental thereto.

"That said passenger does not come within the restrictions of said act, but on the contrary your petitioner alleges that said passenger was a resident of the United States and departed therefrom temporarily; that said passenger is a native-born citizen of the United States, having been born in San Francisco, State of California, at # Dupont street, on or about 1882.

"That he has applied to the collector of the port of San Francisco to be permitted to land, but said application was denied.

"That your petitioner prays that a writ of habeas corpus may be granted, directed to the said general manager of the said steamship company, commanding him to have the body of said passenger before your honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, and together with the time and cause of his detention, and the said writ, and that he may be restored to his liberty.

"Dated San Francisco, California, Dec. 28, 1904.

"(Signature in Chinese) *Petitioner.*

"STATE OF CALIFORNIA,

"*City and County of San Francisco, Northern District of California, U. S. A., ss:*

"The undersigned being sworn says: That he is the petitioner above named; that he has heard read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge; that he resides and does business at 31 Waverly Pl., San Francisco, California.

(Signature in Chinese.)

"Subscribed and sworn to before me this 29 day of Dec., 1904.

"J. S. MANLEY,

"*United States Commissioner for the Northern District of California, at San Francisco.*

Attached to said petition for writ of habeas corpus was a certified copy of the order of the Department of Commerce and Labor dismissing the appeal taken by said Ju Toy from the action of said North, in adjudging

that said Ju Toy was a Chinese alien, and was not born in the United States, and was not entitled under any law to enter or remain therein.

On said petition the writ of habeas corpus so prayed for was on December 29, 1904, duly issued from said court, and thereafter Marshall B. Woodworth, attorney for the United States for said district, appearing on behalf of the United States, made answer to the writ as follows:

4 "That during all the times hereinafter stated H. H. North was and now is the duly appointed, qualified, and acting officer of the United States in charge of the enforcement of the Chinese exclusion laws at the port of San Francisco, in the State and northern district of California, appointed as such by the Secretary of Commerce and Labor, under authority of the act of Congress of February 14, 1903 (30 Stat., 825), and acting under the direction of the Commissioner-General of Immigration as provided in the act of Congress of June 6, 1900 (31 Stat., 611).

"That on the 24th day of October, 1904, the said Ju Toy, being a Chinese person and having immediately come from the Empire of China on the steamship "Doric" to the said port of San Francisco, said port being a port of entry for Chinese immigrants, declared such by section 7 of the act of Congress of September 13, 1888 (25 Stat., 476), made application in person to the said North, as such officer aforesaid, to be admitted to the United States, claiming the right to be admitted.

"Thereupon the said detained Ju Toy was given full opportunity by the said officer to make such voluntary statement in support of his right to be admitted into the United States as he might desire, and also to produce such witnesses and to offer such other proof in support of his claimed right to admission as he might wish to offer, and the testimony of all persons whose names were given the said officers by the said detained or by any person for him, as witnesses in his behalf, was taken, as well as all other evidence brought to the attention of the said officers.

"That all the evidence offered by the said detained was duly received by the said North as said officer, and by his examining officers designated for that purpose; and, after full consideration of all the evidence offered upon such application, it was on the 5th day of November, 1904, adjudged by the said officer that the said detained was an alien Chinese person, not born in the United States, and not entitled under any law to enter or remain therein; and that the master of said steamship "Doric" should return the said Ju Toy to the country from whence he brought him, who now holds the said detained in his custody for deportation to China by virtue of such order.

"On the 7th day of November, 1904, the said North, as such officer, advised the said detained of his action in denying him admission to the United States, and then advised him of his right to take an appeal from such decision to the Secretary of Commerce and Labor.

"In pursuance of such notification, the said detained, on the 7th day of November, 1904, took an appeal from the decision of said officer so denying him admission to the United States to the Secretary of Commerce and Labor.

"Thereupon the said North, acting as such officer aforesaid, duly forwarded to the Commissioner-General of Immigration, all the evidence,

affidavits, statements, and briefs submitted upon the hearing of the application, accompanied by his views thereon in writing, for the submission of the said appeal to the Secretary of Commerce and Labor.

"Upon full consideration of the appeal, the Secretary of Commerce and Labor, on the 13th day of December, 1904, approved the action of the said North, as such officer, in denying the said detained admission to the United States, and in ordering that the said detained be returned to the country from whence he came by the steamship company so bringing him to the United States, and dismissed his said appeal; of all of which the said detained was promptly advised.

5 "A duly certified copy of all the evidence offered upon the hearing of the application of the said detained for admission to the United States, together with a certified copy of all orders made therein by said North, acting as such officer, and by the Secretary of Commerce and Labor, is attached to and made a part of this return and answer, and marked 'Exhibit A.'

"The undersigned avers that the said North, as such officer, in the hearing and determination of the application of the said detained for admission to the United States, and the Secretary of Commerce and Labor in the hearing and determination of the said appeal therefrom, acted in all things in full conformity with the acts of Congress governing the admission of Chinese persons or persons of Chinese descent into the United States and the rules and regulations duly promulgated thereunder.

"That among the regulations promulgated by the Secretary of Commerce and Labor and the Commissioner-General of Immigration governing the admission of Chinese persons into the United States are the following:

"'Rule 6. Immediately upon the arrival of Chinese persons at any port mentioned in rule 4, it shall be the duty of the officer in charge of the administration of the Chinese exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their right to admission, and to permit those proving such right to land.

"'Rule 7. The examination prescribed in rule 6 should be separate and apart from the public, in the presence of Government officials, and such witness or witnesses only as the examining officer shall designate; and, if upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal, and his counsel should be permitted, after duly filing notice of appeal, to examine, but not to make copies of, the evidence upon which the excluding decision is based.

"'Rule 8. Every Chinese person refused admission under the provisions of the exclusion laws by the decision of the officer in charge at the port of entry must, if he shall elect to take an appeal to the Secretary, give written notice thereof to said officer within two days after such decision is rendered.

"'Rule 9. Notice of appeal provided for in rule 8 shall act as a stay upon the disposal of the Chinese person whose case is hereby affected until a final decision is rendered by the Secretary; and, within three days after the filing of such notice, unless further delay is required to

investigate and report upon new evidence, the complete record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Commissioner-General of Immigration by the officer in charge at the port of arrival, accompanied by his views thereon in writing; but on such appeal no evidence will be considered that has not been made the subject of investigation and report by the said officer in charge.

"'Rule 21. The burden of proof in all cases rests upon the Chinese persons claiming the right of admission to, or residence within, the United States, to establish such right affirmatively and satisfactorily to the appropriate Government officers, and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof, and in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States Government.'

6 "The undersigned, upon information and belief, therefore denies that the above-named detained was born in the United States, and denies that he is a citizen thereof; avers that the said detained is an alien and a Chinese laborer not entitled, under any law, to be admitted into the United States, and that the holding and detention of the said detained by the the master of the steamship 'Doric' by direction of the said North, as such officer aforesaid, for deportation to China, is under, by virtue of, and in conformity with, the laws and authority of the United States of America.

"The undersigned, further answering the petition, denies each and every allegation thereof not herein specifically admitted."

(Then followed prayer that said Ju Toy be remanded to the custody of the master of the vessel from which he was taken for deportation to the country whence he came.)

Attached to said return and answer and designated as Exhibit A was a certified copy of all the proceedings and evidence had before H. H. North as commissioner of immigration at the port of San Francisco, and of his examining officers, and of the Department of Commerce and Labor, in the matter of the application of Ju Toy for admission into the United States.

No traverse to said return and answer was made by said Ju Toy, and on December 31, 1904, the United States attorney for said district made and filed a motion to dismiss the writ of habeas corpus which had theretofore been issued. This motion to dismiss the writ was as follows:

"Having made full and correct answer to the writ in this, its return thereto, upon the leave given to intervene, the United States now moves the court to dismiss the writ of habeas corpus issued herein, upon its answer and return as above made, for the following reasons:

"1. The answer and return to the United States upon its face shows that the said North, as such officer, and the Secretary of Commerce and Labor, in all things acted within the authority conferred upon them by law and by the regulations of the Department of Commerce and Labor, duly promulgated thereunder; and, having so acted, the determination of those officers upon the questions of fact committed to them by law is made final, and those questions of fact can not be retried by this court upon a writ of habeas corpus.

"2. The court has no jurisdiction to review the finding of the immigration officer and of the Secretary of Commerce and Labor that the said Ju Toy is a Chinese person, and a person of Chinese descent, and that he was not born in the United States.

7 "3. The petition, the return by the master of the steamship 'Doric,' and the return and answer of the United States, filed in pursuance of its leave to intervene, show that the said detained has no legal right to enter or to remain in the United States.

"4. That the said detained is not unlawfully detained or deprived of his liberty."

The motion to dismiss the writ of habeas corpus was denied by Honorable J. J. De Haven, judge of the district court of the United States for the northern district of California, on December 31, 1904; and thereafter the United States attorney, on January 6, 1905, made and filed a supplemental motion to dismiss the writ of habeas corpus theretofore issued, which supplemental motion was as follows:

"Having made full and correct answer to the writ in its return thereto, upon leave given to intervene, the United States now moves the court to dismiss the writ of habeas corpus issued herein, upon its answer and return as heretofore made, for the following reasons:

"1. The petition fails to allege and show that upon the case presented for their determination the immigration officers abused the discretion vested in them by law, or that their action was unlawful, or that any error prejudicial to the detained Ju Toy was committed.

"2. It does not appear from the return and answer made to the writ that the immigration officers, or the Secretary of Commerce and Labor, acted in violation of the authority conferred upon them by law, or that upon the case submitted to them abused their discretion, or acted unlawfully, or committed any error prejudicial to the detained Ju Toy.

"3. The judgments and rulings of the immigration officers excluding the detained Ju Toy, affirmed on appeal to the Secretary of Commerce and Labor, should be treated by this court as final and conclusive of the questions involved, since it does not affirmatively appear from the whole record that those officers, in the case submitted to them, acted in an unwarranted way, abused their discretion, or committed any error prejudicial to the interest of the detained Ju Toy, and said Ju Toy is not therefore unlawfully deprived of his liberty.

"4. The petition, return, and answer show that the detained Ju Toy has no legal right to enter or remain in the United States and is not unlawfully deprived of his liberty.

"5. There is nothing in the record to show that the detained Ju Toy is unlawfully deprived of his liberty or that he has been unlawfully denied admission to the United States, or that he has a right to enter and remain therein."

8 The supplemental motion to dismiss was, on January 6, 1905, denied by Honorable J. J. De Haven, judge of the district court of the United States for the northern district of California, to which rulings and orders the United States duly excepted.

Thereafter, upon the issues made, testimony of witnesses was taken, on January 18, 1905, before a special referee and examiner, to whom the matter had been theretofore referred by the court, to hear the testimony,

ascertain, determine, and report to the court the facts and his conclusions of law thereon, and recommend such judgment as in his opinion ought to be entered therein. The United States attorney objected to the testimony of each and every witness, and to the offering, or the receiving, of any evidence, on the following grounds:

"As Congress has vested in the immigration officers the power finally to determine the facts with respect to the right of Chinese persons to be admitted into the United States, and as the proper immigration officers have found that this applicant for admission was not born in the United States, and was not entitled to be admitted therein, the Government objects to the offering or the receiving at this stage of the hearing of any evidence except such as is offered for the purpose of impeaching the returns or answers filed herein and of showing such wrongful action on the part of the immigration officers as would amount to a denial of a fair hearing to the applicant and render their proceedings void. Until such illegality of action be shown, the Government insists that this court is without power to ignore the action of the proper immigration officers and to retry the questions of fact, the finding of those officers on the questions of fact being conclusive in the matter.

"The Government also repeats the same objections to the introduction of this testimony as were urged in the motion to dismiss the writ, on the grounds:

"1. That the answer and return of the United States upon its face shows that the said H. H. North, as such immigration officer, and the Secretary of Commerce and Labor, in all things acted within the authority conferred upon them by law and by the regulations of the Department of Commerce and Labor duly promulgated thereunder; and, having so acted, the determination of those officers upon the questions of fact committed to them by law is made final, and is not subject to review by this court upon a writ of habeas corpus.

"2. That the court has no jurisdiction to review the finding
9 of the immigration officer and of the Secretary of Commerce and Labor that the said Ju Toy is a Chinese person of Chinese descent, and that he was not born within the United States.

"3. That the petitioner fails to allege and show that upon the case presented for their determination the immigration officers abused the discretion given them by law, or that their action was unlawful, or that any error prejudicial to the petitioner was committed; therefore, the writ should not have been originally granted and should now be dismissed.

"4. That it does not appear from the returns and answers made to the writ that the immigration officers, or the Secretary of Commerce and Labor, acted in violation of the authority conferred upon them by law, or that upon the case submitted to them, abused their discretion, acted unlawfully, or committed any error prejudicial to the petitioner; therefore the petitioner is not unlawfully detained, and the writ should have been dismissed and should now be dismissed.

"5. That the judgment and rulings of the immigration officers excluding petitioner, affirmed on appeal to the Secretary of Commerce and Labor, should be treated by this court as final and conclusive of the questions involved, since it does not affirmatively appear from the whole record

that those officers, in the case submitted to them, acted in an unwarranted way, abused their discretion, or committed any prejudicial error against the interest of petitioner; therefore petitioner is not unlawfully deprived of his liberty, and the writ should be dismissed.

"6. That the petition, returns, and answers show that the petitioner has no legal right to enter or remain in the United States, and is not unlawfully deprived of his liberty, and the writ should be dismissed.

"7. That there is nothing to show that the petitioner is unlawfully deprived of his liberty or that he has been unlawfully denied admission to the United States, or that he has a right to enter and remain therein; therefore the writ should be dismissed."

The special referee and examiner overruled the objections, to which the United States attorney duly excepted.

Motions were also made by the United States attorney at the conclusion of the testimony of each and every witness to strike out the testimony of the witness from the record, as follows:

"The Government now moves to strike from the record the testimony of this witness, for the reason that it does not tend to impeach the returns or answers filed herein, nor does it tend to show any illegal action on the part of the immigration officers in trying and deciding the question as to the country of birth of the applicant, and for the several reasons urged in the objections of the Government to the introduction of this testimony."

which motions were denied by the special referee and examiner, to which rulings the United States attorney duly accepted.

10 On January 19, 1905, the special referee and examiner reported to the district court of the United States for the northern district of California, all the testimony taken and his findings of fact and conclusions of law, and found from said testimony that said Ju Toy was born in the United States and was a citizen thereof, and recommended to said court that he be discharged from custody, to which report and recommendation the United States attorney took an exception.

Thereafter, on January 19, 1905, said exceptions to said report of said special referee and examiner came up for hearing in the district court of the United States for the northern district of California, and said exceptions taken by the United States attorney were overruled by the court, and the court thereupon rendered judgment that said Ju Toy was illegally restrained of his liberty, as alleged in the petition for the writ, and that he be, and was, thereby discharged from the custody from which he was produced, and that he should go hence without day.

On January 20, 1905, an appeal from that order was taken by the United States to this court, the appellant making the following assignments of error:

"1. That the court erred in undertaking to review the determination of the immigration officers of the United States and of the Department of Commerce and Labor, denying petitioner the right to enter and remain within the United States.

"2. That the court erred in holding that the determination of the immigration officers of the United States and of the Department of Commerce and Labor, denying petitioner the right to enter and remain within the United States was not final and conclusive as to all questions of fact.

"3. That the court erred in overruling the motions of the United States to dismiss the writ of habeas corpus herein, for the reasons specified therein.

"4. That the court erred in not holding that the matters and things stated in the returns and answers of the United States to the writ were sufficient to authorize the court to dismiss the writ of habeas corpus herein.

"5. That the court erred in overruling the several objections and exceptions of the United States taken at the hearing and to the report of the special referee and examiner recommending that petitioner be discharged and be admitted and remain within the United States.

11 "6. That the court erred in undertaking to retry and determine whether or not the petitioner was a Chinese person of Chinese descent, and was or was not a citizen of the United States, after said matters had been fully presented by petitioner and heard, and proofs taken before, and said matters determined by the immigration officers of the United States and of the Department of Commerce and Labor, which said immigration officers of the United States and the Department of Commerce and Labor denied the petitioner the right to enter and remain within the United States on the ground that he was not born in the United States and is not a citizen thereof.

"7. That the court erred in holding that petitioner was denied due process of law in the proceedings before the immigration officers of the United States and of the Department of Commerce and Labor, before whom he claimed that he had a right to enter and remain in the United States because he was born therein and is a citizen thereof, and before whom he presented proofs in that behalf, and by whom he was adjudged not to have been born in the United States and not to be a citizen thereof, and not to be lawfully entitled to enter and remain therein.

"8. That the court erred in not holding that the acts of Congress vesting in the immigration officers of the United States and the Department of Commerce and Labor power to decide questions in dispute with regard to the rights of Chinese persons to enter the United States, and enacting that the decision of the immigration officers of the United States shall be subject to review by the Secretary of Commerce and Labor and not otherwise, were constitutional in their application to all Chinese persons, whether born in the United States or not.

"9. That the court erred in overruling the objections and exceptions of the United States to the introduction of any evidence except such as might be offered for the purpose of impeaching the returns and answers to the writ of habeas corpus, or of showing such illegal action on the part of the immigration officers as would amount to a denial of a fair hearing to the applicant or render their proceedings void; and in overruling the motions of the United States to strike from the record all testimony offered and received in evidence over its objections and exceptions.

"10. That the court erred in not holding that the petition was insufficient in not alleging and showing that upon the case presented for their determination the immigration officers or the Secretary of Commerce and Labor abused the discretion given them by law, or that their action was unlawful, or that some error prejudicial to the petitioner was committed.

"11. That the court erred in not holding that, as it does not appear from the returns and answers made to the writ that the immigration officers, or the Secretary of Commerce and Labor, acted in violation of the authority conferred upon them by law, or that upon the case submitted to them abused their discretion, or committed any error prejudicial to the petitioner, he was not unlawfully detained or deprived of his liberty, and that the writ should have been dismissed.

"12. That the court erred in not holding that the judgments and rulings of the immigration officers excluding the petitioner, affirmed on appeal to the Secretary of Commerce and Labor, should be treated
12 by it as final and conclusive of the question of fact involved, since it does not affirmatively appear from the whole record that those officers, in the case submitted to them, acted in an unwarranted way, abused their discretion, or committed any prejudical error against the interest of the petitioner.

"13. That the court erred in not holding that the petition, return, and answers showed that the petitioner has no legal right to enter and remain in the United States, and is not unlawfully deprived of his liberty."

The said appeal came on to be heard in this court on the 13th day of February, 1905, the appellant appearing by Marshall B. Woodworth, esq., United States attorney, and the appellee by O. P. Stidger, esq., and the respective parties submitted to the court the questions involved in the assignments of error in said cause.

Upon the foregoing statement the questions of law concerning which this court desires the instruction of the Supreme Court, are:

First. Should a district court of the United States grant a writ of habeas corpus in behalf of a person of Chinese descent being held for return to China by the steamship company which brought him therefrom, who having recently arrived at a port of the United States made application to land as a native-born citizen thereof and who, after examination by the duly authorized immigration officers, was found by them not to have been born in the United States, was denied admission and ordered deported, which finding and action upon appeal was affirmed by the Secretary of Commerce and Labor, when the foregoing facts appear to the court and the petition for the writ alleges unlawful detention on the sole ground that petitioner does not come within the restrictions of the Chinese exclusion acts, because born in and a citizen of the United
13 States and does not allege or show in any other way unlawful action or abuse of their discretion or powers by the immigration officers who excluded him?

Second. In a habeas corpus proceeding should a district court of the United States dismiss the writ or should it direct a new or further hearing upon evidence to be presented where the writ had been granted in behalf of a person of Chinese descent being held by the steamship company for return to China from whence it brought him, who recently arrived from that country and asked permission to land upon the ground that he was born in and was a citizen of the United States, when the uncontradicted return and answer show that such person was granted a hearing by the proper immigration officers who found he was not born in the United States, that his application for admission was considered and denied by

such officers, and that the denial was affirmed upon appeal to the Secretary of Commerce and Labor, and where nothing more appears to show that such executive officers failed to grant a proper hearing, abused their discretion, or acted in any unlawful or improper way upon the case presented to them for determination?

Third. In a habeas corpus proceeding in a district court of the United States instituted in behalf of a person of Chinese descent being held for return to China by the steamship company which recently brought him therefrom to a port of the United States and who applied for admission therein upon the ground that he was a native-born citizen thereof but who, after a hearing, the lawfully designated immigration officers found was not born therein and to whom they denied admission which finding and denial, upon appeal to the Secretary of Commerce and Labor, was affirmed—should the court treat the finding and action of such executive officers upon the question of citizenship and other questions of
14 fact as having been made by a tribunal authorized to decide the same and as final and conclusive unless it be made affirmatively to appear that such officers, in the case submitted to them, abused the discretion vested in them or in some other way in hearing and determining the same committed prejudicial error?

(Endorsed:) Certificate under section 6 of act of March 3, 1891. Filed and entered February 14th, 1905. F. D. Monckton, clerk.

15 United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
JU TOY, APPELLEE. } No. 1164.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing fourteen (14) pages, numbered from one (1) to fourteen (14), inclusive, to be a true copy of a certificate of the United States circuit court of appeals for the ninth circuit, certifying certain questions or propositions of law to the Supreme Court of the United States for its decision under section 6 of the act of March 3, 1891, as the original certificate remains on file and of record in my office.

Attest my hand and the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 14th day of February, A. D. 1905.

[SEAL.] F. D. MONCKTON, *Clerk.*

16 (Indorsed:) Office of the clerk, Supreme Court U. S. Received Feb. 20, 1905.

17 (Indorsement on cover:) Certificate. File No. 19635. U. S. circuit court appeals, 9th circuit. Term No. 535. The United States *vs.* Ju Toy. Filed February 20th, 1905. File No. 19635.

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